

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7513 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MAHENDRASINH @ BAKKO

KISHORESINH VAGHELA

Versus

STATE OF GUJARAT

Appearance:

Ms. Suman Pahwa for M/S THAKKAR ASSOC. for Petitioner
MR ND GOHIL ASSTT. GP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/03/99

ORAL JUDGEMENT

Through this petition under Article 226 of the Constitution of India, the petitioner has challenged the impugned order of detention dated 14th August, 1998 passed by the Commissioner of Police, Ahmedabad City under section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("the PASA Act" for short) and has prayed for quashing of the said order and also for his immediate release from illegal detention.

2. Upon perusal of the grounds of detention, it appears that the detaining authority, on the basis of one offence registered under the Bombay Prohibition Act as well as from the statements of two confidential witnesses, was subjectively satisfied that the petitioner is a bootlegger and that his activities were prejudicial for the maintenance of public order. Accordingly, the impugned order of detention was passed against the petitioner.

3. Learned counsel for the petitioner has challenged the impugned order of detention only on one ground that the activities of the petitioner were not prejudicial for maintenance of public order.

4. The subjective satisfaction of the detaining authority that the petitioner is a bootlegger does not suffer from any infirmity rather it is based on material on record. The first material is the offence registered under the Bombay Prohibition Act. The first witness has not stated anything about the bootlegging activities of the petitioner. He was beaten by the petitioner on mere suspicion that he was police informer and was passing on the information regarding activities of the petitioner to the police. Hence this statement cannot be pressed in service for judging the bootlegging activities of the petitioner. The second witness, of course, has stated about the bootlegging activities of the petitioner. There was, thus, one registered offence and direct statement of one confidential witness on the basis of which the detaining authority rightly reached subjective satisfaction that the petitioner is a bootlegger.

5. A bootlegger cannot be preventively detained under the PASA merely because he has indulged in such activities. In order to detain such a person under the PASA, further requirement is that his activities must be prejudicial for maintenance of public order. The term 'public order' has been defined under section 3(4) of the Act as well as under explanation to subsection (4) of section 3 of the Act. Even within the extended meaning of the term 'disturbance of public order' under the aforesaid provisions, it has to be seen whether the activities of the petitioner were prejudicial for maintenance of public order or not.

6. The first material on this count is the registered offence against the petitioner. It was the offence under the Bombay Prohibition Act. No doubt, 156 bottles of foreign made liquor worth Rs. 23,400/- were

recovered from the petitioner but there is no disclosure in the grounds of detention that the petitioner, at the time of search, seizure and arrest, created any situation which was prejudicial for the maintenance of public order even within the extended meaning of disturbance of public order as contained in explanation to subsection (4) of section 3 of the PASA. The petitioner had committed breach of the provisions of the Bombay Prohibition Act for which he was suitably dealt with and the case is pending investigation against him and he is still in custody and has not been enlarged on bail. Thus, this incident and the offence could not be pressed in service for judging the activities of the petitioner being prejudicial for maintenance of public order.

7. Then remains the statement of two confidential witnesses. The first witness stated about the incident dated 25.7.1998 which took place at 2.00 p.m. The petitioner stopped the witness on suspicion that he was a police informer and was passing on information to the police regarding activities of the petitioner. The witness was beaten. He shouted for help. People from nearby locality gathered whereupon the petitioner became angry and rushed towards them with open knife. Thus, in the above incident, no doubt, some beating took place in which the witness was beaten but no serious injury was alleged or disclosed. In the second part of the same incident, the witness has stated that the petitioner rushed towards the public with sharp edged weapon. No injury was, however, caused to any member of public. Thus, in the two parts of the incident, public order cannot be said to have been disturbed by any stretch of imagination.

8. The second incident was dated 29.7.1998 at 7.00 p.m. The witness was passing near Madrasi Temple. He saw that the petitioner was selling wine near the temple. He objected to the petitioner not to sell wine near temple whereupon the petitioner became angry. People collected from the nearby locality. The petitioner again got annoyed. He pointed out razor towards the witness and also to the persons who gathered on the spot. According to the witness, an atmosphere of fear was created in the area and the routine life of the public was disturbed. The learned Assistant Government Pleader has contended that this activity of the petitioner was confined to the place near the temple, a sacred place and a public place and thus, the activities of the petitioner were prejudicial for maintenance of public order. At least in half a dozen cases decided by this Court (presided over by me), I have held that if such

activities are confined near temple, mosque, graveyard or religious place of Jain Community etc. such activities per se cannot be deemed to have created any situation prejudicial for maintenance of public order. Consequently, no different view in this case is required to be taken. There is no additional material before this Court that the public at large had objected to such activities of the petitioner and thereby public at large or any section thereof near the temple was affected by such activities or that the peace and tranquility in the area was disturbed. Thus, merely on the ground that the activities of the petitioner were confined near the temple, it cannot be said that the situation was prejudicial for maintenance of public order. So far as the incident is concerned, it can again be divided in two parts. So far as the first part is concerned, the witness has stated that he was beaten by the petitioner. At the most, it was a situation disturbing the law and order and not disturbing public order. No serious beating was given to the witness, despite the fact that the petitioner was possessing sharp edged weapon. He did not inflict any injury to the witness even though injury by sharp edged weapon could have been caused to the witness. Therefore, it could not be said that situation prejudicial for maintenance of public order was created during second incident.

So far as the second part of incident is concerned, mere running of the petitioner with razor or sharp edged weapon towards the public could not have created a situation which was prejudicial for maintenance of public order. The disturbance in locality when such incident took place was natural but the disturbance cannot be stretched to the extent that it created a sense of alarm or insecurity or danger to the life of general public or a section thereof. Consequently, this incident also did not create any situation prejudicial for maintenance of public order.

It the activities of the petitioner were not prejudicial for maintenance of public order, the detention order against him is rendered illegal and invalid. It has, therefore, to be quashed.

The writ petition, therefore, succeeds and is hereby allowed. The impugned order of detention dated 14.8.1998 passed by the Commissioner of Police, Ahmedabad City (Annexure "A" to the petition) is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

18.3.1999. (D.C.Srivastava,J.)

Vyas